BLM LIBRARY
88067361

United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Supplemental Environmental Impact Statement DOI-BLM-NV-0000-2013-0001-EIS
Case File Numbers: 2880 NVN-084650, OR-64807, UTU-82880,
And WYW-171168 (W0350)

RECORD OF DECISION
Ruby Pipeline Project
Decision to Reissue Right-of-Way Grant

Lincoln and Uinta Counties, Wyoming
Rich, Cache, and Box Elder Counties Utah
Elko, Humboldt and Washoe Counties, Nevada
Lake and Klamath Counties, Oregon

U.S. Department of the Interior

Bureau of Land Management
Nevada State Office
Kemmerer Field Office, Wyoming
Salt Lake Field Office, Utah
Elko and Winnemucca District Offices, Nevada
Lakeview Resource Area and Klamath Falls Resource Area, Oregon
Surprise Field Office, California

1340 Financial Boulevard
Reno, Nevada 89502
775-861-6400

Introduction

This document constitutes the Record of Decision (ROD) of the U.S. Department of the Interior, Bureau of Land Management (BLM), Nevada State Office, for the Ruby Pipeline Project (Project). It documents the BLM's decision to reissue the right-of-way granted to Ruby Pipeline, LLC (Ruby) and includes a summary of public involvement in the decision making process and the basis for making this decision.

The ROD is based on the analyses contained in the Final Environmental Impact Statement (EIS), the Draft Supplemental Environmental Impact Statement (SEIS) and the Final SEIS for the Project. It also relies on the U.S. Fish and Wildlife Service's (FWS) Revision to the June 8, 2010 Ruby Pipeline Biological Opinion (BiOp). On July 5, 2013, the Revised BiOp was published on the Federal Energy Regulatory Commission's (FERC) website (www.ferc.gov). The Revised BiOp is also attached as Attachment A.

This document meets the requirements for a ROD, as provided in Council on Environmental Quality (CEQ) regulations codified at 40 Code of Federal Regulations (CFR) § 1505.2, and follows the guidance found in 40 CFR § 1506.10 and BLM Handbook H-1790-1 § 9.7. As explained in more detail below, this ROD can be appealed to the Interior Board of Land Appeals (or to an appropriate United States Court of Appeals), so the BLM is releasing the Final SEIS and ROD on the same date. Review of the Final SEIS and the opportunity to seek review of the ROD run concurrently.

Background

The Project is a 678-mile-long, 42-inch-diameter interstate natural gas pipeline beginning near Opal, Wyoming, running through northern Utah and northern Nevada, and terminating near Malin, Oregon. The project crosses about 368 miles of federal land.

The FERC is the federal agency responsible for evaluating applications to construct and operate interstate natural gas pipeline facilities. Section 7(c) of the Natural Gas Act (NGA) authorizes the FERC to issue a Certificate of Public Convenience and Necessity (Certificate) if it determines that the proposed service is required for the public convenience and necessity [15 United States Code (U.S.C.) 717f(c)]. On January 27, 2009, Ruby filed an application with the FERC for a Certificate of Public Convenience and Necessity for the Project. The FERC prepared an EIS to assess the environmental impacts associated with the proposed Project. The BLM, Bureau of Reclamation (Reclamation), FWS, U.S. Forest Service (USFS), Natural Resource Conservation Service, Army Corps of Engineers, Utah Public Lands Policy Coordination Office, and Lincoln County (Wyoming) Board of County Commissioners participated as cooperating agencies in the preparation of the EIS because of jurisdiction over part of the project area or because of special expertise with respect to environmental resources in the project area.

The BLM adopted the Final EIS for the Project in accordance with 40 CFR, § 1506.3 to meet its responsibilities under the National Environmental Policy Act (NEPA).

#87922757 ID 8806736 HD 243 .N3 R839 2013c C2

The Project was approved by the FERC on April 5, 2010 and the BLM issued a ROD granting rights-of-way and temporary use permits to Ruby for the construction, operation, maintenance, and termination of the Project on July 12, 2010. The ROW authorized the use of Federal lands under jurisdiction of the BLM, the USFS, Reclamation, and the FWS in Wyoming, Utah, Nevada, and Oregon. Since July 12, 2010, the BLM has issued four additional decisions regarding the grant:

- the December 10, 2010 decision is for the Summit Lake Route Variance in Humboldt County, Nevada, and accepts the final Winter Construction Plan as Appendix V of Ruby's Plan of Development (POD);
- the February 24, 2011 decision is for the Klamath County Reroute in Oregon;
- the December 7, 2011decision approves four above ground cathode sites and fifteen roads to mainline valves;
- the July 27, 2012 decision incorporates documents that reflect the final pipeline as built and approval of the Long Term Monitoring Plan as Appendix W of POD.

Construction of the pipeline commenced in the summer of 2010 and was completed in the summer of 2011. The pipeline went into service on July 28, 2011.

The Center for Biological Diversity, Defenders of Wildlife, and Summit Lake Paiute Tribe, among other entities, filed petitions for review of the 2010 BiOp and the BLM's ROD in the Ninth Circuit Court of Appeals case nos. 10-72356, 10-72552, 10-72762, 10-72768, and 10-72775 (consolidated). In October 2012, the court denied most of the petitioners' claims, including all claims brought under the National Historic Preservation Act, Federal Land Policy and Management Act, and Clean Water Act, but found the 2010 BiOp and BLM ROD to be inadequate.

In a published opinion, the court remanded and vacated the 2010 BiOp to the FWS. The court held that FWS's consideration of Ruby's Endangered Species Act (ESA) Conservation Action Plan (CAP) as cumulative effects in the 2010 BiOp was arbitrary and capricious. The court also found that the 2010 BiOp did not adequately consider whether groundwater withdrawals associated with hydrostatic testing and dust abatement would impact listed fish that occur in surface waters. The court remanded and vacated the BLM's ROD because it relied on the 2010 BiOp.

In an unpublished opinion, the court found that the Final EIS for the Project did not provide sufficient quantified or detailed data about the cumulative loss of sagebrush steppe vegetation and habitat and did not provide information on how much acreage sagebrush steppe used to occupy, or what percentage has been destroyed. Thus, the court remanded the ROD to the BLM for further analysis of cumulative impacts to sage brush steppe vegetation and habitat. The court subsequently stayed vacature of the 2010 BiOp until the FWS issued the Revised BiOp and stayed vacature of the BLM's ROD until the BLM issues a new ROD.

The Bureau of Land Management's Decision

The BLM's decision is to reissue the July 12, 2010 right-of-way, as previously amended, for the Project. The BLM will not require additional post-construction mitigation or changes to the

right-of-way grant. All elements of the July 12, 2010 ROD and subsequent BLM decisions (see above) remain in full force and effect, including all stipulations, monitoring, and mitigation measures.

Reasons for the Decision

In making this decision, the BLM reviewed and carefully considered pertinent Federal laws, impacts identified in the Final EIS, Revised BiOp and Final SEIS, relevant issues and concerns, and input from agencies, Native American tribes, and the public received throughout the SEIS public review process, including comments on the Draft SEIS. The BLM's assessment of cumulative impacts to sage brush steppe in the Final SEIS and the FWS's conclusions in the Revised BiOp are summarized below.

The Final EIS addresses the court's direction to provide quantified and detailed data about the cumulative loss of sagebrush steppe vegetation and habitat and information on how much acreage sagebrush steppe use to occupy, and what percentage has been destroyed. It also includes detailed information on past, present, and reasonably foreseeable actions within the cumulative impact area, as defined in the Final EIS for the Project, which have resulted in and may in the future cause significant impacts.

The direct and indirect impacts of the Project remain the same as those discussed in the Final EIS. The Final SEIS is consistent with the Final EIS in concluding that clearing of sagebrush steppe for the Project could result in long-term impacts on the environment because this vegetation type could take as long as 50 years or more to return to preconstruction conditions. The mitigation required by the FERC Certificate and the BLM ROD is intended to address these significant, long-term impacts. The mitigation described in the Final EIS and includes, but is not limited to, activities such as segregating topsoil from subsoil during construction to preserve the native seed bank in the topsoil; reseeding areas disturbed by construction with species similar to those in the surrounding natural plant communities; planting shrubs to aid in the reestablishment of sagebrush and other shrubby species; implementing measures to control the spread of invasive and noxious weeds during and after construction; and fund for off-site mitigation, such as the restoration and habitat improvement projects described in Table 1 of the Final SEIS.

The 2010 BiOp found that the proposed action was not likely to jeopardize the continuing existence of any of the listed species or result in destruction or adverse modification of designated critical habitats. The findings of the Revised BiOp, described below, are consistent with those reached in the 2010BiOp.

> *"After reviewing the current status of Lahontan cutthroat trout, Warner sucker, Modoc sucker, Lost River sucker, shortnose sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub, and designated critical habitat for Warner sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub, the environmental baseline for these listed fishes and their designated critical habitats within the action area, the effects of the proposed action and cumulative effects, it is the FWS' biological opinion that the Project is not likely to jeopardize the continued existence of Lahontan cutthroat trout, Warner sucker, Modoc*

sucker, Lost River sucker, shortnose sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub (Revised BiOp, Page 15). "

The FWS also affirmed the accuracy of the incidental take statement found in the 2010 BiOp and incorporated it by reference. Those conclusions were drawn without consideration of or reliance on the ESA CAP. The conservation recommendations described in the 2010 BiOp were reviewed by the FWS, were determined to stand as written, and were incorporated by reference.

Mitigation and Monitoring

The CEQ regulations require agencies to identify in their ROD any mitigation measures that are necessary to minimize environmental harm from the alternative selected [40 CFR § 1505.2(c)]. The regulations further state that a monitoring and enforcement program shall be adopted where applicable for any mitigation (40 CFR § 1505.3).[1]

As explained above, the Project's impacts remain are consistent with those disclosed in the Final EIS. The Final SEIS thoroughly discusses the cumulative impacts to sage brush steppe habitat within the cumulative impact area and summarizes the substantial mitigation required by the BLM's July 12, 2010 ROD (and the FERC's Certificate). The mitigation measures required by the ROD are intended to address the significant long- term impacts to sage-brush steppe habitat related to the Project. All elements of the July 12, 2010 ROD and subsequent BLM decisions remain in full force and effect, including all stipulations, monitoring, and mitigation measures. The BLM concludes that those mitigation measures are adequate and additional mitigation measures are not required.

Summary of Agency and Tribal Consultation and Public Involvement

The BLM sent a certified letter, dated March 13, 2013, notifying 36 Native American tribes of BLM'S intent to develop an SEIS for the Project and to initiate government-to-government consultation. Follow-up phone calls were made to the tribes and project information was also distributed and discussed as part of government-to-government consultation between the tribes and the BLM. A summary of Native American consultation and coordination on this effort is provided in the SEIS.

On April 8, 2013, the BLM invited eight federal and state entities to be cooperating agencies for the development of the Ruby Pipeline SEIS. As defined by CEQ regulations at 40 CFR § 1508.5, a cooperating agency is one that has special expertise with respect to an environmental issue and/or has jurisdiction by law. The following agencies accepted the invitation and signed a Memorandum of Understanding with the BLM as cooperating agencies:

[1] CEQ's regulations also require a ROD to discuss alternatives considered by the agency in making its decision. 40 CFR § 1506.2. However, in this case, the pipeline is constructed and has been operational pursuant to a FERC-issued Certificate since July 28, 2011. Thus, as stated by the Ninth Circuit Court of Appeals, "[a]t this point, an analysis of alternatives would no longer inform decision-making regarding the pipeline's location." *Center for Biological Diversity, et al. v. BLM, et al.*, Case No. 10-72356, at 5 (2012) (unpublished opinion).

- U.S. Department of Agriculture, Forest Service, Fremont-Winema National Forest;
- Utah Division of Wildlife Resources (via Utah Public Lands Policy Coordination Office);
- Nevada Department of Wildlife; and
- Wyoming Game and Fish Department.

On April 30, 2013 the Environmental Protection Agency (EPA) published the "*Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement for the Ruby Pipeline Project*" in the *Federal Register* (78 FR 25301). In addition, the BLM Nevada State Office issued a press release and postcards notifying the public of this effort

The BLM sent a certified letter, dated July 1, 2013, notifying 36 tribes of the public comment period on the Draft SEIS and to again extend the offer of government-to-government consultation. The BLM included a digital copy of the Draft SEIS and a hard copy, if previously requested. The BLM followed-up with tribes and distributed additional information, as requested, as part of government-to-government consultations with the tribes.

On July 5, 2013, the BLM and EPA published the "Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Ruby Pipeline Project" in the *Federal Register* (78 FR 40496) announcing the availability of the Draft SEIS for public review and comment. In addition, the BLM issued a press release and sent post card notifications to the revised Project mailing list. The release of the Draft SEIS initiated a formal 45-day public comment period that ended on August 19, 2013. The public was encouraged to submit substantive comments via email, regular mail, and the ePlanning NEPA Register.

The Draft SEIS was made available to the public via the BLM Ruby Project website: http://www.blm.gov/nv/st/en/info/nepa/ruby_pipeline_project.html, and the ePlanning NEPA Register at: http://on.doi.gov/10QtaTb. Consistent with the Final EIS distribution, the Draft SEIS was available at libraries and other locations. The list of additional locations can be found on the Project website.

The BLM received 31comment submissions on the Draft SEIS from the public, agencies, tribes, organizations, and businesses during the comment period. Substantive comments were considered during preparation of this Final SEIS. Appendix A of the Final SEIS summarizes the comments and the responses to those comments.

Publication and distribution of the ROD and public notification of the release of the Final SEIS was consistent with the approach used for the Draft SEIS.

Summary of Public Comment on the Draft SEIS

During the Draft SEIS public comment period, the BLM received 31 written comments (letter, email, or via the NEPA ePlanning Register). Comments from Native American tribes, federal, state, and local agencies, and the public were analyzed and considered in preparation of the Final SEIS and this ROD.

While comments on the Draft SEIS were wide ranging, the majority of comments were focused on three topics. First, commenters questioned the BLM's distinction that the impacts of the

Project would not be significant to sagebrush steppe habitat when considering present and reasonably foreseeable future actions, but cumulative impacts to sagebrush steppe would be significant when considering past, present, and reasonably foreseeable future actions. Commenters suggested that, when considering present and reasonably foreseeable future actions, the impacts from Ruby should be considered significant. Second, commenters requested either that the BLM report back to the public on the effectiveness of on-site and off-site restoration and mitigation efforts or include additional mitigation to address recommended changes to the significance determination and the effectiveness of current restoration efforts. Third, commenters requested additional information and discussion on livestock, wild horses and burros.

Regarding the significance determination, the Draft and Final SEIS acknowledge that past actions have had a significant cumulative impact on the sage brush steppe habitat. The Final SEIS was revised to note that cumulative impacts from present and reasonably foreseeable future actions also may be significant. The impacts of the Ruby Pipeline Project remain the same as those discussed in the Final EIS. As explained above, the BLM has determined that existing mitigation measures required in the ROD and Certificate are adequate and no additional mitigation is required. Regarding restoration, the Final SEIS was revised to include a more detailed discussion of: (1) Ruby's obligations regarding restoration, monitoring, and reporting; and (2) the BLM's role in determining when restoration goals have been met, the possibility of extending monitoring if goals are not being met, and the release of the bond submitted by Ruby when goals are met. Moreover, restoration efforts pertain to implementation of the ROD and are not germane to the court's direction to provide a more robust discussion of the cumulative impacts to sagebrush steppe vegetation and habitat. The BLM and FERC will continue to enforce applicable restoration and monitoring requirements. Finally, discussion and analysis in the Cumulative Effects and Existing Environment sections regarding livestock and wild horses and burros was updated and revised in response to comments.

Some commenters also requested that the BLM incorporate other additional actions, such as connecting pipeline projects, into the cumulative impacts analysis. BLM reviewed specific actions and incorporated them as appropriate, given the scope of the Final SEIS and cumulative impact area defined in the Final EIS. The Final SEIS also included minor revisions in response to comments. Several commenters requested the BLM to consider topics outside of the scope of the analysis as described in the Purpose and Need. The BLM's responses to the substantive comments and a summary of additional comments received during the comment period are included in the Final SEIS (Attachment A, Draft Ruby SEIS Comment Response Report).

Some tribes submitted comments similar to those discussed above. Some tribes also questioned the seed mixes used during restoration, affirmed their right to government-to-government consultation, and stressed the cultural and religious significance of sagebrush steppe habitat to Native American tribes. The BLM appreciates those comments, and the BLM has responded to them in the Final SEIS (Attachment A, Draft Ruby SEIS Comment Response Report).

Appeal Rights

By regulation, 43 CFR § 28810.1(b), this ROD is effective pending appeal. This ROD may be appealed to the Interior Board of Land Appeals (IBLA) in accordance with that regulation, the provisions of 43 CFR § 4, and the enclosed Form 1842-1. Alternatively, you may seek judicial review of this ROD by filing a petition for review with an appropriate United States Court of Appeals pursuant to 43 CFR § 4.21(c) and Section 313(b) of the Energy Policy Act of 2005 (EPAct), which amended Section 19 of the Natural Gas Act (NGA) and is codified in relevant part at 15 U.S.C. § 717r.

Appeals to the IBLA

If you decide to file an appeal with the IBLA, your Notice of Appeal must be addressed to the Nevada State Director and served on the Office of the Regional Solicitor at the addresses below within 30 days of the date of the publication of the EPA's NOA of the ROD and Final SEIS in the *Federal Register*. The appellant has the burden of showing that the decision appealed from is in error.

Nevada State Director
BLM Nevada State Office
1340 Financial Boulevard
Reno, NV 89502

Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, E-1712
Sacramento, CA 95825

Within 30 days of filing the Notice of Appeal, you must file a complete statement of the reasons why you are appealing. This must be filed with the IBLA at the following address with a copy to the Office of the Regional Solicitor at the address above. If you fully stated your reasons for appealing when filing the Notice of Appeal, no additional statement is necessary.

Interior Board of Land Appeals
Office of Hearings and Appeals
801 North Quincy Street, MS 300-QC
Arlington, VA 22203

If you wish to file a petition, pursuant to 43 CFR §§ 2881.10(b) and 43 CFR § 4.21(b), for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your Notice of Appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the Notice of Appeal and petition for a stay must also be submitted to each party named in this decision, the IBLA, and the Office of the Regional Solicitor (see 43 CFR §§ 4.413) at the same time the original documents are filed at the office of the Nevada State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Petitions for Judicial Review

Section 19 of the NGA states, "The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as "permit") required under Federal law, other than the Coastal Zone Management Act of 1972." 15 U.S.C. § 717r(d)(1).

This ROD is an order or action of a Federal agency issuing a permit, as that term is used in 15 U.S.C. § 717r(d)(l) because it is an agency decision to issue and condition a BLM ROW grant for the use of Federal lands involved in the Ruby Pipeline Project, which is a facility that has been constructed and will be operated pursuant to 15 U.S.C. § 717f. Accordingly, this ROD is appealable directly to an appropriate United States Court of Appeal s in accordance with 15 U.S.C. § 717r(d)(1) and the Federal Rules of Appellate Procedure.

Approval Signature

Approved By: _____ Date: NOV 1 8 2013

Amy Lueders
Authorized Officer and
Nevada State Director
Bureau of Land Management

Contact Person:
Mark A. Mackiewicz, PMP
Senior National Project Manager
Bureau of Land Management
Washington Office
125 South 600 West
Price, Utah 84501
(435) 636-3616

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL

Department of the Interior - Bureau of Land Management
Attn: State Director
1340 Financial Boulevard
Reno, Nevada 89502-7147

WITH COPY TO SOLICITOR

Department of the Interior - Office of the Solicitor
Pacific Southwest Region
2800 Cottage Way, Room B-1712
Sacramento, CA 95825-1890

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR

Department of the Interior - Office of the Solicitor
Pacific Southwest Region
2800 Cottage Way, Room B-1712
Sacramento, CA 95825-1890

4. ADVERSE PARTIES

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ---------- Alaska
Arizona State Office --------- Arizona
California State Office ------- California
Colorado State Office -------- Colorado
Eastern States Office --------- Arkansas, Iowa, Louisiana, Minnesota, Missouri and, all States east of the Mississippi River
Idaho State Office ------------ Idaho
Montana State Office --------- Montana, North Dakota and South Dakota
Nevada State Office ---------- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ---------- Oregon and Washington
Utah State Office ------------- Utah
Wyoming State Office -------- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

REVISION TO THE

JUNE 8, 2010 RUBY PIPELINE BIOLOGICAL OPINION

06E00000-2013-F-0006

U. S. FISH AND WILDLIFE SERVICE
MOUNTAIN PRAIRIE REGION

LAKEWOOD, COLORADO

Date JUL 5 2013

Michael Thabault,
Assistant Regional Director, Ecological Services

INTRODUCTION

This document is a Revision (Revision) to the Service's June 8, 2010 Biological Opinion (Opinion) on the effects from the Ruby Pipeline Project (Project) to listed species and proposed or designated critical habitat. The Opinion was issued for the Federal Energy Regulatory Commission's (FERC) proposed issuance of a final certificate for the Ruby Pipeline Project (Project), proposed in Wyoming, Utah, Nevada, and Oregon. The Opinion's analysis focused on the Project's effects on the following listed species and critical habitats: Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha)*, razorback sucker (*Xyrauchen texanus*), bonytail chub (*Gila elegans*), Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi)*, Warner sucker (*Catostomus warnerensis*), Modoc sucker (*Catostomus microps)*, Lost River sucker (*Deltistes luxatus*), and shortnose sucker (*Chasmistes brevirostris*), proposed critical habitat for the Lost River sucker and the shortnose sucker, and designated critical habitat for Warner sucker and the four Colorado River fishes referenced above.

The Opinion (and this Revision) was developed in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. et seq.)

This Revision is necessary because the Ninth Circuit Court of Appeals found certain aspects of our original Opinion to be arbitrary and capricious. In *Center for Biological Diversity v. Bureau of Land Management* et al, No. 10-72356, the court found that conservation measures proposed by the pipeline proponent and that were not part of FERC's proposed action were mischaracterized in the Opinion. The Service analyzed the voluntary measures as cumulative effects in the Opinion because FERC did not incorporate the measures into its project. The court found that the mischaracterization by the Service sidetracks enforcement of the measures by the Service, precludes reinitiation of consultation should the measures not be implemented and eliminates exposure of a challenge to the failure to implement the conservation measures to citizen suit challenge.

The court also found that the Opinion failed to adequately consider whether groundwater withdrawals associated with hydrostatic testing and dust abatement would impact listed fish that occur in surface waters.

The court ordered us to:

> [F]ormulate a revised Biological Opinion that: (1) addresses the impacts, if any, of Ruby's groundwater withdrawals on listed fish and critical habitat; and (2) categorizes and treats the Conservation Action Plan measures as "interrelated actions" or excludes any reliance on their beneficial effects in making a revised jeopardy and adverse modification.

This Revision provides an analysis of the potential impacts from groundwater and surface water withdrawals based on what was proposed and presented in the Biological Assessment.

Following the rationale of the court regarding the lack of certainty regarding the implementation of the Ruby's Endangered Species Conservation Plan (Conservation Plan), we have chosen to

not include the Conservation Plan in the Opinions' analysis either as a part of the proposed action, the cumulative effects analysis, or as an interrelated action.

This Revision is based on water source information as identified in the FERC FEIS (2010b), fish and critical habitat locations as defined in the Fish and Wildlife Service Biological Opinion (Service 2010), Environment and Ecology (2013a) water withdrawal table, Environment and Ecology (2013b) Ute ladies tresses report, and substantive email, phone, or face-to-face discussions with Ruby and their environmental consultants. A synthesis of that information can be found in the Ruby Groundwater Analysis Report (Service 2013a)

This Revision was prepared by the Service's Lakewood, Colorado Regional Office in coordination with Service Regional Offices in Regions 1, 6, and 8, as well as the Nevada, Oregon, and Klamath Falls Field Offices of the Service.

REVISION STRUCTURE

Because the issue of water withdrawal is relatively narrow considering the scope of the project, and water withdrawal is proposed only for the construction phase of the Project, this Revision assesses effects of groundwater withdrawal during project construction and incorporates by reference the majority of the information in the Opinion. This Revision also provides an analysis of how not considering the Conservation Plan relates to the findings of jeopardy and adverse modification that were included in the June, 2010 opinion. Unless otherwise specified, the June, 2010 Opinion remains unchanged. The Service has structured this Revision using the same major headings as the Opinion and has noted for each section what information from the Opinion has been incorporated by reference, what information represents an addition, or what information replaces sections from the Opinion.

CONSULTATION HISTORY (Revision)

The history of the original consultation process is described in our June 8, 2010 Opinion (Appendix A, p. 2-3) and is incorporated by reference. [1]

Between January and June of 2013, the Service had numerous conference calls, electronic mail exchanges and meetings with representatives of Ruby and their environmental consultants. Information from that effort is compiled in the Service's Ruby Groundwater analysis Report (Service 2013a).

Service Concurrence on ESA-Listed Species

[1] During Project construction the Service coordinated with FERC and Ruby staff to ensure commitments, analyses, and requirements of the Opinion were fulfilled. No substantive changes to the proposed action, or the Opinion's effects as analyzed occurred during construction occurred and all Terms and Conditions of the Incidental Take Statement were fulfilled during construction. No request for reinitiation of consultation was received from FERC during Project construction. Finally, Ruby's required waterbody crossing post-construction monitoring is ongoing and has not identified any unanticipated conditions due to waterbody crossings.

Black-footed ferret

The project BA (FERC 2010a) concluded that the Project's proposed action may affect, but is not likely to adversely affect (NLAA) black-footed ferret (*Mustela nigripes*). In our Opinion we concurred with FERC's NLAA conclusion for this species (Service 2010, p.3) and outlined our rationale for the concurrence. We have reviewed that concurrence and rationale, find it to be unchanged, and incorporate it by reference into this Revision.

Ute ladies-tresses

The project BA (FERC 2010a) concluded that the Project's proposed waterbody crossing action may affect, but is not likely to adversely affect (NLAA) Ute ladies'-tresses (*Spiranthes diluvialis*). In our Opinion we concurred with FERC's NLAA conclusion for waterbody crossing effects to this species and outlined our rationale for the concurrence (Service 2010, p.4. Ute ladies'-tresses are a riparian species, and therefore also potentially sensitive to Ruby's proposed water withdrawals. Ute ladies'-tresses occur along waterbodies in several western states, including parts of southwestern Wyoming, north-central and western Utah, and extreme eastern Nevada.

Environment and Ecology (2013b) reviewed existing and historical distribution information for Ute Ladies'-tresses, and conducted focused field surveys where water withdrawals occurred in potential Ute ladies'-tresses habitats, and determined that there are no Ute Ladies'-tresses occurrences in any of the basins where Project water withdrawals were proposed. Therefore there are no additional effects to be analyzed from the Project's water withdrawals.

Our original concurrence and rationale remain valid for Project waterbody crossings and are incorporated by reference into this Revision.

I. PROPOSED ACTION

The project BA and thus the Opinion describe the proposed action (constructing and operating a natural gas pipeline running from Lincoln County, Wyoming through Wyoming, Utah, Nevada, and Oregon, terminating near the Oregon-California state line in Klamath County, Oregon) in detail (Service 2010, pp. 4-25). The Service has reviewed that proposed action, determined it is still accurate and incorporates it by reference into this Revision[2] In addition in the text below, the Service expands and supplements the proposed action as it relates to the issue of proposed groundwater withdrawal.

Summary of Proposed Water Ground Withdrawal:

The Project proposes ground water withdrawals from individual wells and surface water sources located across the 675 mile pipeline construction route. These widely-spaced, individual wells and surface water locations would be used to provide construction-related water sources for

[2] As described in the transmittal letter, the amount proposed to be withdrawn was 415,165,083 gallons; the total volume actually used was 280,710,397 gallons. Additionally the transmittal letter gives an update on the completed action and incidental take.

construction site management as well as pipeline hydrostatic testing (FERC 2010a). Project water use will largely be non-consumptive, with discharge of water occurring within the same hydrologic basin. Based on the water source information in the Project's Final Environmental Impact Statement (FERC 2010b), a total of 79 well, six canal, three reservoir, and 15 stream sources are proposed (Table 1 – Appendix B) across 4 states. Of those 103 water sources, 43 occur in 8th HUC basins (ESA basins) that contain ESA fish species or critical habitat (ESA fish and critical habitat locations as defined in the Opinion that could be affected by Project water withdrawal actions) (Table 2 – Appendix C). Therefore, only those water sources that occur in an ESA basin will be further evaluated in this Revision.

During pipeline construction, water trucks will be the main method to convey water from water sources to the Project site for Project construction site management purposes. This water is used for dust abatement, equipment cleaning, and other construction site needs. Water trucks will be filled from groundwater wells or surface water sources utilizing a pump at the typical rate of 300 to 400 gallons per minute. A typical water truck holds 4,000 gallons of water, and can be filled in approximately 10 to 15 minutes. At the peak of construction a water source could be utilized up to 10 times per day, for a maximum of 40,000 gallons of water withdrawn per day over a total maximum time of 150 minutes per day. A water source for construction site management may be used for up to a month. Some construction site management water sources will also be used for hydrostatic testing, but the withdrawals for construction site uses will generally precede the hydrostatic testing water withdrawals.

After the pipeline sections are welded together, the pipeline will be hydrostatically pressure tested using water. During hydrostatic testing the pipeline is divided into independent sections, and the sections are filled with water and pressured up to a level beyond the maximum operating pressure at which the pipeline would operate when transporting natural gas. Generally, a water source will only be used once for hydrostatic testing, but the water may be constantly withdrawn from the source over a few hours to several days. As an example, a 6 mile test section of pipe would be filled with 2.172 million gallons of water and, at a pumping rate of 1,000 gallons per minute, would take approximately 36 hours. Where hydrostatic test water sources are located at some distance from the construction right-of-way, temporary above-ground pipelines are utilized to convey water from the water source to the pipeline.

II. STATUS OF THE SPECIES

The Opinion described the status of the nine listed fish species and their proposed or designated critical habitat in detail on pages 26 through 69. The Service has reviewed the Status of the Species section of the Opinion and finds one item to revise (noted below); the rest is incorporated by reference into this Revision.

In the Opinion, critical habitat was described as being proposed for designation for the Lost River and shortnose suckers. On December 11, 2012 that designation was made final (Service 2012). As indicated in the transmittal letter, a biological opinion (Service 2013b) analyzing the effects of the Project has been prepared for the designated critical habitat.

III. ENVIRONMENTAL BASELINE

The Opinion described the environmental baseline for each of the nine listed fish species and (if applicable) their proposed or designated critical habitat (Service 2010, pp. 69-79). The Service has reviewed the environmental baseline information, determined it to be accurate, and incorporates it by reference into this Revision.

IV. EFFECTS OF THE ACTION

For this Revision, the Service includes the following analysis of the impacts from groundwater withdrawals to surface water and the listed species or proposed or designated critical habitat that may be associated with those surface waters. All other effects of the action described in the Opinion (Service 2010, pp. 79-100) were reviewed by the Service, determined it to be accurate, and are incorporated by reference in this Revision.

Effects of Project Ground Water Withdrawal:
Multiple source, long-term, high volume groundwater pumping, for purposes such as agricultural use, has led to significant surface water flow reductions and associated adverse impacts to water-dependent species including fish and riparian vegetation (USGS 2013).Unlike the above examples that can cause significant and long term depletions of groundwater with associated reductions in surface water volumes, the Project would require short duration, limited volume water withdrawals from widely spaced, individual water sources across the 675 mile pipeline construction route. These water sources would be used to provide short duration water sources for hydrostatic testing as well as construction site management.

Each Project hydrostatic test well would be used to withdraw water a single time for a short duration (in ESA basins this water withdrawal would last a few hours up to a maximum of 12 days, depending upon location) but at a higher volume than construction site management wells. Hydrostatic test wells that remove water from a shallow depth may intercept groundwater that (depending upon distance from well to surface water feature) might otherwise have eventually discharged to a stream or (again, depending upon distance from well to surface water feature) induce flow away from the stream into the aquifer. However, hydrostatic test wells operated for brief periods at deeper depths will have less likelihood of affecting groundwater or depleting water flow in adjacent streams.

Construction site management wells will intermittently withdraw small volumes of water at a slow rate over one month in the construction season. Over a month a construction site management well would slowly and intermittently remove approximately 5 acre-feet of water - equivalent to a groundwater flow reduction of approximately 0.1 cubic feet per second over a one month construction period. This small groundwater flow reduction would result in an even smaller surface water flow reduction, if there was any possibility of a groundwater-surface water connection. The construction site management wells therefore will have a relatively low likelihood of groundwater or surface water impacts.

A total of 43 Project water sources are proposed in ESA basins, including three in Colorado River fishes basins, 22 in Lahontan cutthroat trout basins, four in Warner sucker basins, five in Modoc sucker basins, and nine in Lost River sucker and shortnose sucker basins (Table 2 Appendix C). The three water sources in the Colorado River Basin would use surface water, and are assessed in the Colorado River Fishes section of the Opinion (Service 2010, pp. 96-100) and below. The water sources in Lahontan cutthroat trout basins, as well as Warner, Modoc, Lost River sucker and shortnose sucker basins would be from groundwater wells or reservoir water, and are addressed below.

The Service considered several factors in characterizing and approximating the likelihood and significance of impacts of Project water source use on ESA listed fish or their critical habitat. Factors such as depth of well, and speed, duration, and volume of withdrawal, as well as distance to nearest surface water feature, were used to assess the likelihood of groundwater withdrawal resulting in a future reduction in surface water flow. Additional factors such as distance between the Project water source and nearest surface water feature, existing impediments to surface water connectivity (direct connection vs. complex connection via water diversions and canals or through geographical barriers) from water source to occupied ESA fish habitat or critical habitat, as well as distance from nearest surface water feature to nearest ESA fish or critical habitat location, were used to assess the likelihood of a Project water source-related flow reduction being experienced within ESA fish habitat or critical habitat. Finally, if the potentially affected ESA fish or critical habitat occurred upstream from Project water source, that water source received minimal additional review as any potential flow impacts from a downstream water source would not likely be transmitted into upstream occupied ESA fish habitats or critical habitat. Considering all these factors, we then characterized each Project water source's relative impact to ESA fish or critical habitat as **"no effects anticipated"**, **"effects expected to be insignificant or discountable"**, or **"effects not expected to be insignificant or discountable"**. Table 2 (Appendix C) provides a summary of this water source impact analysis for the ESA fishes and critical habitats.

Lahontan cutthroat trout

Groundwater wells are the only type of Project water source proposed in Lahontan cutthroat trout basins (Table 2 – Appendix C). A total of 22 wells are proposed in Lahontan cutthroat trout basins, including 5 hydrostatic wells and 17 construction site management wells. Twenty of these wells are proposed downstream of Lahontan cutthroat trout occupancy where any potential downstream groundwater or surface water impacts would not be translated into upstream habitats where Lahontan cutthroat trout occur.

Hydrostatic Test Wells - Hydrostatic test wells withdraw water at a faster rate and volume than construction site management wells, potentially resulting in relatively greater likelihood of groundwater and surface water impacts. However, all five hydrostatic wells are proposed downstream of occupied Lahontan cutthroat trout habitat where any potential downstream groundwater or surface water impacts would not be translated into upstream habitats where Lahontan cutthroat trout occupancy occurs, and therefore will not affect stream flows within the upstream areas with Lahontan cutthroat trout occupancy. The Service therefore anticipates **no effects** to Lahontan cutthroat trout from these five hydrostatic wells.

Construction Site Management Wells - Construction site management wells withdraw small volumes of water at a slow rate over a one month period, resulting in a relatively lower likelihood of groundwater and surface water impacts. A total of 15 of 17 of the construction site management wells are proposed downstream of Lahontan cutthroat trout occupancy where any potential downstream groundwater or surface water impacts would not be translated into upstream habitats where Lahontan cutthroat trout occupancy occurs, and therefore will not affect stream flows within the upstream areas with Lahontan cutthroat trout occupancy. The Service therefore anticipates **no effects** to Lahontan cutthroat trout from these 15 construction site management wells. Two proposed wells are adjacent to ephemeral tributaries that flow into Willow Creek. Willow Creek is occupied by Lahontan cutthroat trout. Any potential groundwater impacts from intermittent use of these two small-volume, slow withdrawal wells will not likely be translated into a reduction in the nearest surface water features, which are ephemeral streams. These ephemeral streams likely will not have surface flows during most of the Project's well use period, as ephemeral streams generally experience surface water flow for only short durations under certain extreme climatic events. One of these two small volume, slow withdrawal wells also is 12 miles from Lahontan cutthroat trout habitat in Willow Creek, further reducing any potential for any surface flow reductions to be experienced within far-distant Lahontan cutthroat trout habitat. Therefore this well will have **No Effect** to Lahontan cutthroat trout. However, the remaining well for consideration is within a closer distance (0.4 miles) of Willow Creek via an ephemeral tributary. While this well is a relatively close distance to occupied Lahontan cutthroat trout habitat, it remains unlikely that this intermittent use, small volume, slow withdrawal well will cause a reduction in the flows of the adjacent ephemeral and likely-dry tributary, and that any unlikely flow reductions will ultimately be experienced in occupied Lahontan cutthroat trout habitat 0.4 miles away. Therefore the Service anticipates this well's **effects to be insignificant or discountable** to Lahontan cutthroat trout and will not cause adverse effects to the species.

Summary of Impacts to Lahontan cutthroat trout - Because no adverse effects to Lahontan cutthroat trout are anticipated from Project water sources, no additional groundwater-surface water analysis for Lahontan cutthroat trout will be provided in this Revision.

Warner Sucker and Critical Habitat

Groundwater wells are the only type of Project water source proposed in the Warner sucker basin (Table 2 – Appendix C). A total of four wells are proposed in the Warner sucker basin, including one hydrostatic test well and three construction site management wells.

Hydrostatic Test Wells - The hydrostatic test well will withdraw water for a short duration (less than three days) from 350-700 feet depth, resulting in low likelihood of reduced surface water flow in the adjacent stream. Additionally, the well is located 13 miles upstream of Warner sucker occupied habitat, via a series of off-channel water diversions that further reduce any likelihood of the well causing surface water reductions within occupied Warner sucker habitat that is 13 miles upstream. The Service therefore anticipates **no effects** to Warner sucker or PCEs of critical habitat from this hydrostatic test well.

Construction Site Management Wells - One construction site management well will withdraw water from 350-700 feet depth. While this well is adjacent to a stream with Warner

sucker occupancy13 miles downstream, the small volume, slow withdrawal from this well will not likely be translated into a reduction in the adjacent stream or in far-downstream Warner sucker habitat (no critical habitat). The second construction site well is located 1,100 feet from the nearest surface water feature (an ephemeral stream), and more than 9.5 miles away, including in an upstream direction, to the nearest occupied Warner sucker habitat and critical habitat. The Service therefore anticipates **no effects** to Warner sucker or PCEs of critical habitat from these construction site management wells. The third construction site management water source is a combination of three wells, which will be used at separate times on an intermittent basis over a one month period to provide an overall small total volume (5.1 acre-feet) of water withdrawn for construction site management. This combined-well water source effectively results in each individual well intermittently withdrawing 1.7 acre-feet of the overall one month withdrawal (or an average of approximately 0.03 cubic feet per second withdrawal from groundwater source, (which is approximately the flow rate of a garden hose under moderate pressure), thereby greatly reducing risk of well-related surface water flow reductions from any one or all three wells combined. While one of these wells is nearby to an occupied Warner sucker stream, with critical habitat, and the other two wells are approximately ½ mile from this same Warner sucker stream, based on the small, slow, and intermittent water withdrawals from this combination of wells, the Service anticipates this water source's **effects to be insignificant or discountable** to Warner sucker and PCEs of critical habitat and will not result in adverse effects to the species.

Summary of Impacts to Warner Sucker and Critical Habitat - Because no adverse effects to Warner sucker or PCEs of critical habitat are anticipated from Project water sources, no additional groundwater-surface water analysis for Warner sucker or critical habitat will be provided in this Revision.

Modoc Sucker

Groundwater wells are the only type of Project water source proposed in the Modoc sucker basin, including one hydrostatic test well and four construction site management wells (Table 2 – Appendix C).

All five wells in the Modoc sucker basin are proposed downstream of or in unconnected streams to Modoc sucker occupancy, where any potential downstream groundwater or surface water impacts would not be translated into upstream habitats where Modoc sucker occupancy occurs, and therefore will not affect stream flows within Modoc sucker occupied habitat. The Service therefore anticipates **no effects** to Modoc sucker from these five wells.

Summary of Impacts to Modoc Sucker - Because no adverse effects to Modoc sucker are anticipated from Project water sources, no additional groundwater-surface water analysis for Modoc sucker will be provided in this Revision.

Lost River and Shortnose Sucker and Proposed Critical Habitat

This Revision includes analysis of the ground water withdrawal and the effects to Lost River and Short nose suckers. As noted in the transmittal letter, the Service issued a conference report (not a conference opinion) on impacts to proposed critical habitat for these two species of suckers and included it with the original Opinion. Since that time, the critical habitat has been designated. The Service has therefore assessed the potential effects from the proposed Project in the

biological opinion on the critical habitat attached to the transmittal letter for this Revision (Service 2013b).

The Project will use groundwater wells (five construction site management, three hydrostatic test) and one surface water reservoir as water sources within the shortnose sucker and Lost River sucker basin (Table 2 – Appendix C).

Hydrostatic Test Wells - One hydrostatic test well is located 32 stream miles downstream from occupied Lost River and shortnose sucker habitat. The Service therefore anticipates **no effects** to Lost River sucker and shortnose suckers from this hydrostatic test well. Another hydrostatic test well is located greater than 8 miles from occupied Lost River and shortnose sucker habitat, via unlikely surface water connections through multiple irrigation canals. Additionally, a geographic barrier exists between the well and occupied Lost River and shortnose sucker habitat, further limiting any potential surface water connection impacts. The Service therefore anticipates **no effects** to Lost River sucker and shortnose suckers from this hydrostatic test well. The third hydrostatic well is deep (400-700 ft), with short duration (approximately two days) and limited overall volume withdrawn. The deep well and limited water volume withdrawn, result in low likelihood of reduced surface water flow in the adjacent ephemeral (and likely dry) tributary. The adjacent, likely dry surface water feature connects after 1 mile to East Fork Willow Creek. The East Fork Willow Creek eventually confluences after 3 miles with North Fork Willow Creek, which has shortnose sucker and Lost River suckers. Due to the low likelihood of any surface water flow reductions, the ephemeral nature of the most-adjacent surface water feature, and distance from this ephemeral feature to occupied habitat, the Service anticipates this water source's **effects to be insignificant or discountable** to shortnose sucker and Lost River suckers and not rise to a level of adverse effects.

Construction Site Management Wells - One construction site management well will slowly and intermittently withdraw water from 400-700 feet depth. The deep well, intermittent use, and slow and limited water volume withdrawn is unlikely to reduce surface water flow in the adjacent ephemeral (and likely dry) tributary, or four miles away in North Fork Willow Creek, which has shortnose sucker and Lost River suckers. Due to the unlikely nature of any surface water flow reductions, the ephemeral nature of the most-adjacent surface water feature, and distance from this ephemeral feature to occupied habitat, the Service anticipates **no effects** to shortnose sucker and Lost River suckers from this water source. Of the remaining five construction management site water sources in Lost River and shortnose sucker basins, two are located downstream of occupied Lost River and shortnose sucker habitat, and will result in **no effects** to Lost River and shortnose suckers that occur upstream of these wells. Two wells are located greater than 8 miles from occupied Lost River and shortnose sucker habitat via unlikely surface water connections through multiple irrigation canals and a geographic barrier; the Service therefore anticipates **no effects** to Lost River sucker and shortnose suckers from these wells. The final water source is from a large (approximately 7,000 acre-foot) surface water reservoir, where the slow, small (5.1 acre-foot) volume withdrawal, over a one month period, will represent a very small portion of overall surface water storage in the reservoir, and will have **no effects** to Lost River sucker and shortnose suckers that might occur in the Lost River, well downstream from the off-river reservoir.

Summary of Impacts to Lost River Sucker and Shortnose Sucker - Because no adverse effects to Lost River sucker and shortnose sucker are anticipated from Project water sources, no additional groundwater-surface water analysis for Lost River sucker and shortnose sucker will be provided in this Revision.

Colorado River Fishes and Critical Habitat

One Project surface water source in the Colorado River basin was proposed (Roberson Creek) but not specifically assessed in the Opinion. The Roberson Creek site would be used intermittently over one month to provide an additional small volume (five acre-feet) of water for construction site management. No additional adverse effects to Colorado River fishes and critical habitat, above those already described for impacts of water depletions less than 100 acre-feet in the Opinion (which is described in more detail below), would occur from this small additional water withdrawal. All combined, the Project's water depletions from the Colorado River Basin will total less than 55 acre-feet.

In the Service's programmatic small water depletions biological opinion (Service 1993), we determined that individual projects with either a new or historic average annual water depletion of 100 acre-feet or less, up to a cumulative total of an additional 12,000 acre-feet in the Upper Basin, may adversely affect Colorado pikeminnow, razorback sucker, bonytail chub, and humpback chub and their critical habitat.

The Service notes that the Project's additional five acre-foot depletion, to be removed from Roberson Creek over a one month period, will spread the relatively small, five acre-foot surface water depletion out over a long period of time, and thereby greatly reduce any adverse effects to endangered fish and critical habitats that occur far downstream. Additionally, the Project's Roberson Creek depletion will occur above a major water storage project (Flaming Gorge reservoir and dam), and operations of this water storage feature will additionally mute any Roberson Creek-related adverse effects to Colorado River fishes and critical habitats. For these reasons, the Service expects this small additional Project depletion will have a small, **but not insignificant or discountable,** effect on Colorado River fishes and critical habitat.

Conclusion on Effects from Ground Water Withdrawals

The Project proposes water withdrawals from individual wells and surface water sources located across the 675 mile pipeline construction route. These widely-spaced, individual wells and surface water locations were determined to have no adverse effects to Lahontan cutthroat trout, Warner sucker and its critical habitat, Modoc sucker, and Lost River sucker and shortnose sucker. An additional 5 acre-foot withdrawal from Roberson Creek, in the upper Colorado River Basin, would not add any new effects to Colorado River fishes and their critical habitat that were not already addressed in the Opinion.

CUMULATIVE EFFECTS

Cumulative effects are those effects of future state or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject

to consultation (50 CFR 402.02). Cumulative effects that reduce the ability of a listed species to meet its biological requirements may increase the likelihood that the proposed action will result in jeopardy to that listed species or in destruction or adverse modification of designated critical habitat. The following sections describe the other cumulative effects likely to occur in the Project's action area.

The Opinion, described future, non-federal actions within the action area that were likely to have effects to the species analyzed in the Opinion (Service 2010, pp. 101-105). It contained a large number of potential future conservation actions that Ruby had considered implementing for species conservation (Service 2010, pp. 101-103). Upon review of the Opinion and the Ninth Circuit's Opinion, the Service has concluded that the Conservation Action Plan should not be considered as a cumulative effect or in any other manner in this Revision.[3] As a result, this Revision removes those conservation actions entirely from consideration in our jeopardy and adverse modification analysis for the Project.

The following modified cumulative effects analysis replaces (in its entirety) the cumulative effects section of the Opinion.

Lahontan Cutthroat Trout, Warner Sucker, Modoc Sucker, Shortnose Sucker, and Lost River Sucker

The biological assessment provided a brief assessment of reasonably foreseeable projects in the action area, based on input from federal agencies, county planning and zoning departments crossed by the project, and by other entities during FERC's NEPA review process for the Project (FERC 2010a, p. 33).

> *"We requested information from cooperating agencies regarding reasonably foreseeable projects during our NEPA review. Ruby consulted county planning and zoning departments that would be crossed by the project to identify future planned projects, and submitted information regarding known projects in its Certificate Application. Ruby and various commenters also submitted information regarding future planned projects during the draft EIS comment period. The majority of the projects that were identified are federal projects that would be reviewed through separate consultations. Non-federal, reasonably foreseeable projects identified to date include two residential development projects in Box Elder County, Utah and a habitat restoration project on retired ranch land in the Willow Creek watershed in Elko County, Nevada. We do not anticipate that these projects, as proposed, would have cumulative effects to any of the federally listed species discussed below because 1) none of these species are known to occur in Box Elder County, Utah, and 2) we do not believe that the habitat restoration project would be detrimental to Lahontan cutthroat trout known to occur in the area. The habitat restoration project is being undertaken and designed to enhance greater sage-grouse, mule deer, and Lahontan cutthroat trout habitats."*

[3] While Ruby has transferred funding and many of the Conservation Action Plan activities are being implemented, at the time of the Opinion, the actions were not clearly part of the proposed Project, and implementation or lack thereof in the future was not clearly enforceable.

Recreation is a common private activity that is likely to occur in the action area. Although state and federal resource management agencies manage recreational activities in the action area to some degree (*i.e.,* campgrounds, trailheads, OHV trails, access for angling), a considerable amount of dispersed, unmanaged recreation occurs on both federal and nonfederal lands. Expected impacts to listed fishes from this type of unmanaged recreation include minor increases in turbidity and sedimentation, impacts to water quality, short-term barriers to fish movement, and minor changes to riparian and inwater habitat structures. Streambanks, riparian vegetation, and spawning and rearing areas can be disturbed wherever human use is concentrated.

Livestock grazing is likely to occur in the action area along private land waterbodies, and, depending upon livestock management strategy and consistency of application, can result in improved riparian and inwater habitat conditions, or continued suppression of woody and herbaceous riparian vegetation, unstable stream banks, increased sediment delivery to the waterbody, and reductions in aquatic and riparian habitat quality.

Water diversion from waterbodies and water withdrawals from wells on private land are likely to continue occuring in the action area. Current water diversions have reduced downstream flows and created fish passage barriers. Future water withdrawals, including surface water diversion and some groundwater pumping, may lead to reduced stream flows in certain locations. Adverse effects from reduced flows and fish passage barriers in streams was discussed above; the Service anticipates these types of adverse effects to listed fishes from reduced flows would be similar when reduced flows occur in the future from private activities.

Mining and associated dewatering are anticipated to continue occurring in portions of the Lahontan cutthroat trout action area, especially in North Fork Humboldt and Maggie Creek subbasins. Mining will impact riparian, stream bank, and stream bed conditions, and associated dewatering will impact fish habitat and fish passage.

Recreational fishing within the action area is expected to continue, as regulated by state wildlife management agencies and tribes. In Nevada and Oregon it is expected that legal and illegal angling activities will contribute to a limited lethal harvest of Lahontan cutthroat trout and the ESA-listed sucker species in this Revision. The level of lethal harvest is expected to remain at relatively low levels.

When considered, these cumulative effects from nonfederal activities are likely to have mostly negative effects on listed fish population abundance, productivity, and spatial structure in the action are in the future. The Service anticipates the nonfederal activities identified above that cause negative effects will continue to suppress instream and riparian habitats in certain areas, and restrict listed fish abundance and distribution in those areas. However, based on the limited role of the action area on the survival and recovery of each of these listed fish, these negative cumulative effects in the action area will have minimal negative influence on the survival and recovery of each of these fish species. The Service also anticipates the single nonfederal project identified above likely will result in positive effects in a very limited area of a single LCT stream.

Warner Sucker Critical Habitat

Warner sucker critical habitat occurs on both federal and nonfederal lands in the action area. Nonfederal activities discussed above that adversely affect Warner sucker will also have adverse effects on the PCEs of Warner sucker critical habitat, including recreational activities, livestock grazing, and water diversions that will continue to suppress and degrade riparian zones and reduce amount and connectivity of flowing water. These cumulative effects on Warner sucker critical habitat in the action will likely have varying degrees of negative impact to the recovery function of the PCEs of Warner sucker critical habitat.

Colorado River Fishes and Critical Habitat

Reasonably foreseeable future activities that may adversely affect Colorado River fishes and their critical habitat in the action area include oil and gas exploration and development, irrigation and other water depletions not associated with the Recovery Program, urban development, industrial development, and recreational activities such as angling. Implementation of these activities and projects may adversely affect water quantity and quality, and have adverse effects on Colorado River fishes and their critical habitat, and have a negative influence on the recovery role of the affected critical habitat reaches.

Cumulative effects to the Colorado River endangered fishes in the action area would likely include the following types of impacts:

- Changes in land use patterns that would remove or further fragment Colorado River fishes' habitat or designated critical habitat;
- Shoreline recreational activities and encroachment of human development that would remove upland or riparian/wetland vegetation and degrade water quality;
- Increased competition with, and predation by, exotic fish species introduced by anglers or other sources;
- Water depletions for various non-federal activities, including the construction of ponds, reservoirs, ditches, and water diversion structures for activities such as irrigation, stock watering, power production, municipal use, and industrial needs.

Cumulative effects to the designated critical habitat for Colorado River endangered fishes in the action area would likely include the following types of impacts:

- Changes in land use patterns that would remove or further fragment Colorado River fishes' habitat would adversely affect the physical habitat PCE for the four Colorado River listed fish;
- Shoreline recreational activities and encroachment of human development that would remove upland or riparian/wetland vegetation and degrade water quality would adversely affect the water quality and physical habitat PCEs for the four Colorado River listed fish;
- Increased competition with, and predation by, exotic fish species introduced by anglers or other sources would adversely affect the biological environment PCE for the four Colorado River listed fish;

- Water depletions for various non-federal activities, including the construction of ponds, reservoirs, ditches, and water diversion structures for activities such as irrigation, stock watering, power production, municipal use, and industrial needs would adversely affect the water, physical habitat, and biological environment PCEs for the four Colorado River listed fish.

CONCLUSION

Analytical Framework for the Jeopardy and Adverse Modification Analyses

In accordance with section 7 regulations and policy, the jeopardy determination is made by evaluating the effects of the proposed Federal action in the context of the species current status, taking into account any cumulative effects, to determine if implementation of the proposed action is likely to cause an appreciable reduction in the likelihood of the survival and recovery of the species in the wild.

Likewise, for purposes of the adverse modification determination, the effects of the proposed Federal action on species critical habitat are evaluated in the context of the range-wide condition of the critical habitat, taking into account any cumulative effects, to determine if the critical habitat range-wide would remain functional (or would retain the current ability for the PCEs to be functionally established in areas of currently unsuitable but capable habitat) to serve its intended recovery role for the species.

The 2010 Opinion found that the proposed action was not likely to jeopardize the continuing existence of any of the listed species or result in destruction or adverse modification of designated critical habitat (Service 2010, pp. 105-107). However, because the Service has included a new analysis of groundwater withdrawals to the effects of the action, and Ruby's potential conservation actions have been removed from consideration as Cumulative Effects, revised conclusions are necessary. The Service modifies and replaces the conclusions found in the Opinion with the following revised conclusions.

After reviewing the current status of Lahontan cutthroat trout, Warner sucker, Modoc sucker, Lost River sucker, shortnose sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub, and designated critical habitat for Warner sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub, the environmental baseline for these listed fishes and their designated critical habitats within the action area, the effects of the proposed action, and cumulative effects, it is the Service's biological opinion that the Project is not likely to jeopardize the continued existence of Lahontan cutthroat trout, Warner sucker, Modoc sucker, Lost River sucker, shortnose sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub, or adversely modify or destroy designated critical habitat for Warner sucker, Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub. The Service reached these conclusions for the following reasons.

Lahontan Cutthroat Trout

While the conclusion for Lahontan Cutthroat Trout in the Opinion considered the impact of Ruby's Conservation Plan along with the other elements used in the analytical framework, the

conclusion did not rely or depend on the potential benefits of the plan to arrive at its conclusion. The Service stated "*Certain nonfederal actions identified in the Cumulative Effects section are anticipated to contribute to the recovery of Lahontan cutthroat trout and will have a beneficial effect to Lahontan cutthroat trout in the action area, in the Eastern GMU, as well as rangewide*"(Service 2010, p. 105). In the following conclusion the Service's rationale is based on the analytical framework, without including any potential effects from Ruby's Conservation Plan.

The Project has carefully sited its numerous waterbody crossings to avoid known occupied Lahontan cutthroat trout habitats. And no groundwater withdrawals were found to cause adverse effects. Avoidance of known occupied Lahontan cutthroat trout habitat reduces the Project's potential for direct adverse impacts to Lahontan cutthroat trout and its habitats. However, the Service has determined that 75 Project waterbody crossings at perennial and intermittent streams are connected, either biologically or geomorphologically, to occupied Lahontan cutthroat trout habitat, and there is likelihood that Lahontan cutthroat trout could be at these waterbodies at the time of construction. At these 75 connected waterbody crossing sites the Service anticipates up to 230 Lahontan cutthroat trout will be killed and 53,625 linear feet of Lahontan cutthroat trout habitat impacted during and immediately following construction of these 75 waterbody crossings.

The Project's action area contains a limited number of habitats occupied by limited numbers of Lahontan cutthroat trout. At the Eastern GMU as well as rangewide scales, these limited mortalities in the action area represent a very small component of the Lahontan cutthroat trout's population or habitat. The Lahontan cutthroat trout and habitats impacted by the proposed Project contribute a minor role in the viability of the Eastern GMU as well as in the range-wide survival and recovery needs of Lahontan cutthroat trout. For these reasons, the Service concludes that the Project's limited adverse effects will not result in an appreciable reduction in the likelihood of survival and recovery of Lahontan cutthroat trout.

Warner Sucker and Critical Habitat

While the conclusion for Warner Sucker in the 2010 Opinion considered the impact of Ruby's Conservation Plan along with the other elements used in the analytical framework, the conclusion did not rely or depend on the potential benefits of the plan to arrive at its conclusion. The Service stated, "*Additionally, certain nonfederal actions are likely to occur in the action area that are anticipated to contribute to the recovery of Warner sucker and will have a beneficial effect to Warner sucker and its designated critical habitat in the action area as well as rangewide by improving habitat access and connectivity*"(Service 2010, p. 106). In the following conclusion the Service's rationale is based on the analytical framework, without including any potential effects from Ruby's Conservation Plan.

The groundwater withdrawal analysis found no adverse effects to Warner sucker or its critical habitat. The Project will cross two occupied Warner sucker streams that also contain designated Warner sucker critical habitat. The Project will also cross three additional streams with connectivity to occupied Warner sucker habitat and designated Warner sucker critical habitat. The Service anticipates 25 Warner sucker will be killed during work site isolation and other

construction activities, and 5,720 linear feet of Warner sucker habitat will be impacted during and immediately after construction of a total of eight waterbody crossings of intermittent and perennial streams in occupied and connected Warner sucker habitat. Limited amounts of PCEs of Warner sucker critical habitat occur at the two designated critical habitat waterbody crossings and a limited amount of riparian vegetation and other components of critical habitat that currently occur at these two waterbody crossing sites will be removed or altered.

Project-related loss or degradation of aquatic and riparian habitat, in addition to future nonfederal activities that will continue to have certain deleterious effects, will have adverse effects to Warner sucker and its critical habitat, and these types of impacts are usually important considerations in the range-wide survival and recovery needs of this species. However, at the two occupied waterbody crossings (Twelvemile and Twentymile Creeks) and three tributaries to occupied Warner sucker habitat, existing geomorphological conditions and other Project protective measures will minimize adverse effects to the species to the extent that these relatively minor impacts are not likely to permanently reduce the viability of the action area or rangewide Warner sucker populations. Additionally, these relatively minor impacts within designated critical habitat will not reduce the role of the affected critical habitat relative to the intended recovery function of the affected critical habitat (which is to support, in part, a viable population of the Warner sucker). For those reasons, the Service concludes that the Project's limited adverse effects will not result in an appreciable reduction in the survival and recovery of Warner sucker, and will not appreciably reduce the recovery function of its critical habitat at the action area and rangewide scales.

Modoc Sucker

While the conclusion for Modoc Sucker in the 2010 Opinion considered the impact of Ruby's Conservation Plan along with the other elements used in the analytical framework, the conclusion did not specifically describe those potential effects, rely, or depend on the potential benefits of the plan to arrive at its conclusion (Service 2010, p. 106). In the following conclusion the Service's rationale is based on the analytical framework, without including any potential effects from Ruby's Conservation Plan.

The groundwater withdrawal analysis found no adverse effects to Modoc suckers. The Project will cross a single waterbody with occupied Modoc sucker habitat, but the crossing will occur downstream of normal areas of habitat occupancy by this species in Thomas Creek. The Service anticipates four Modoc sucker will be killed during work site isolation and construction activities, and 715 linear feet of Modoc sucker habitat impacted during and immediately after construction of one waterbody crossing in occupied Modoc sucker habitat.

These limited mortalities and habitat impacts will affect a minor component of the Modoc sucker population within the action area, and are not likely to permanently reduce the viability of this population or that of the rangewide Modoc sucker population. For those reasons,the Service concludes the proposed Project is not expected to appreciably reduce the likelihood of survival and recovery of the Modoc sucker at the rangewide scale.

Lost River Sucker and Shortnose Sucker and Proposed Critical Habitat

While the conclusion for Lost River Sucker and Shortnose Sucker in the 2010 Opinion considered the impact of Ruby's Conservation Plan along with the other elements used in the analytical framework, the conclusion did not specifically describe, rely or depend on those potential effects of the plan to arrive at its conclusion (Service 2010, p. 107). In the following conclusion the Service's rationale is based on the analytical framework, without including any potential effects from Ruby's Conservation Plan.

The groundwater withdrawal analysis found no adverse effects to Lost River or Shortnose Suckers. The Project will cross three occupied Lost River sucker and shortnose sucker streams. At one of these waterbody crossings, the Lost River, the Project will construct in occupied Lost River sucker and shortnose sucker habitat using a dry-trench method with blasting. The Project will also cross two additional streams with connectivity to occupied Lost River sucker and shortnose sucker habitat. The Service anticipates 19 shortnose sucker and 19 Lost River sucker will be killed during work site isolation and construction activities, and 3,575 linear feet of combined shortnose sucker and Lost River sucker habitat impacted during and immediately after construction of a combined total of five waterbody crossing in overlapping occupied and connected shortnose sucker and Lost River sucker habitat.

Project-related loss or degradation of aquatic and riparian habitat and the killing of 19 shortnose sucker and 19 Lost River sucker represent a minor component of the Lost River sucker and shortnose sucker populations and their habitat within the action area and an even smaller component of the Lost River sucker and shortnose sucker populations and their habitat across the range of these species. For these reasons, the proposed Project is not likely to permanently reduce the viability of Lost River sucker and shortnose sucker populations at the action area or rangewide scales. For those reasons, the Service concludes the proposed Project is not likely to cause an appreciable reduction in the likelihood of survival and recovery of Lost River sucker and shortnose sucker.

As noted in the transmittal letter, the Service issued a conference report on impacts to proposed critical habitat for these two species of suckers and included it with the original Opinion. Since that time, the critical habitat has been designated. The Service has therefore assessed the potential effects to designated LSR and SNS critical habitat from the proposed Project in a separate biological opinion (Service 2013b).

Four Colorado River Fishes and Critical Habitat

While the conclusion for four Colorado Fishes and their critical habitat in the 2010 Opinion considered the impact of Ruby's Conservation Plan along with the other elements used in the analytical framework, the conclusion did not specifically describe, rely, or depend on the potential benefits of the plan to arrive at its conclusion (Service 2010, p. 107). In the following conclusion the Service's rationale is based on the analytical framework, without including any potential effects from Ruby's Conservation Plan.

The Project's water depletion amount (54.5 acre-feet) over several months of one construction season is a minor reduction in flow in downstream habitats of the Green and Colorado Rivers occupied by ESA-listed Colorado River fishes.

Although the programmatic small water depletions biological opinion implementing the Colorado River fishes recovery Plan (Service 1993) states that small depletions cause an adverse impacts to listed fishes and the PCEs of designated critical habitat, the experience of the Service since implementation of the Recovery Program has shown that the individual depletions in and of themselves cause minimal impact because of their size and scattered locations. Therefore the project's effects are unlikely to have significant impacts to the survival and recovery of the listed Colorado River fishes or their critical habitat.

Though cumulative effects from non-federal actions have the potential for various adverse effects to Colorado Fishes and critical habitat, sufficient progress is currently being accomplished by the Recovery Program to improve the status of the listed Colorado River fishes and their critical habitat (Service 2009c). This progress helps offset potential adverse effects from the cumulative effects. For those reasons, the Service concludes the effects of proposed action and together with consideration of the cumulative effects are not likely to appreciably reduce the survival and recovery of the listed Colorado River fishes or result in destruction or adverse modification of their critical habitat.

INCIDENTAL TAKE STATEMENT

An Incidental Take Statement was included in the Opinion for take that was anticipated to occur during implementation of the Project (Service 2010, pp. 108-114). As noted above with respect to the impacts of water use from hydrostatic testing and construction, we found there would be no effects that would adversely impact any listed species (or in the case of the Colorado River fishes) present effects beyond those considered in the Opinion. Consequently, no take would have been anticipated as a result of the groundwater analysis. Therefore, the Service affirms the accuracy of the incidental take statement of the Opinion and it is incorporated by reference.[4]

CONSERVATION RECOMMENDATIONS

The conservation Recommendations described in the Opinion (Service 2010, pp. 114-115) were reviewed by the Service, stand as written, and are incorporated by reference.

REINITIATION NOTICE

The Reinitiation notice described in the Opinion (Service 2010, p. 115) was reviewed by the Service, stands as written, and is incorporated by reference.

---

[4] The Opinion estimated direct take from construction of waterbody crossings totaling 297 adult ESA listed fish. However, no ESA listed fish of any life stage were found or collected during pre-construction fish salvage activities at waterbody crossings, indicating that there likely were few (if any) listed fish in the construction area during Project waterbody crossing construction. Therefore, the impacts to listed species from direct take was significantly less than anticipated.

LITERATURE CITED

The literature cited section in the Opinion (Service 2010, pp. 116-141) was reviewed by the Service, and is incorporated by reference (with original year designation). In addition, the following citations are either referenced in this Revision or added to the Literature Cited section.

Environment and Ecology, Inc. 2013a. Ruby pipeline construction water source table. Dated June 10, 2013.

Environment and Ecology, Inc. 2013b. Ruby pipeline construction Ute ladies'-tresses report. Dated June 10, 2013

Federal Energy Regulatory Commission (FERC). 2010a. Ruby Pipeline Project Biological Assessment. Docket No. CP09-54-000. January 2010.

Federal Energy Regulatory Commission (FERC). 2010b. Ruby Pipeline Project Final Environmental Impact Statement. Docket No. CP09-54-000. January 2010.

U.S. Fish and Wildlife Service (Service). 1993. Biological Opinion on Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program). Mountain Prairie Regional Office. Lakewood, CO.

U.S. Fish and Wildlife Service (Service). 2009c. Final 2008-2009 assessment of "sufficient progress" under the Upper Colorado River Endangered Fishes Recovery Program in the Upper Colorado River Basin, and of implementation of December 20, 1999, "15-mile Reach Programmatic Biological Opinion". Mountain Prairie Regional Office, Lakewood, Colorado.

U.S. Fish and Wildlife Service (Service). 2010. Biological Opinion Regarding the Effects the Federal Energy Regulatory commission's Ruby Pipeline. Mountain Prairie Regional Office. Lakewood, CO.

U.S. Fish and Wildlife Service (Service) 2013a Ruby Pipeline Project Groundwater Analysis Report. June 2013.

U.S. Fish and Wildlife Service (Service). 2013b. Biological Opinion Regarding the Effects the Federal Energy Regulatory commission's Ruby Pipeline on critical habitat for the Lost River and Shortnose Suckers. Klamath Falls Fish and Wildlife Office, Klamath Falls , Oregon.

U.S. Fish and Wildlife Service (Service). 2012. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Lost River Sucker and Shortnose Sucker; Final Rule. Federal Register, Vol. 77, No. 238. December 11, 2012. pp. 73740 – 73768.

U. S. Geological Survey (USGS). 2013. Understanding and managing the effects of groundwater pumping on streamflow. Fact Sheet 2013-3001. January 2103.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Nevada State Office
1340 Financial Boulevard
Reno, Nevada 89502-7147
http://www.blm.gov/nv

In Reply Refer To:
8160 (NV933) P

Dear Reader:

Enclosed for your review is the Record of Decision (ROD) and Final Supplemental Environmental Statement (Final SEIS) for the Ruby Pipeline Project. As allowed by 40 Code of Federal Regulations (CFR) Part 506.10(b), the Bureau of Land Management (BLM) is announcing its decision and publishing the ROD concurrently with the Final SEIS. These documents have been developed by the BLM in accordance with the National Environmental Policy Act of 1969 (NEPA). The U.S. Environmental Protection Agency will publish the Notice of Availability (NOA) of the *Record of Decision and Final Supplemental Environmental Impact Statement for the Ruby Pipeline Project* in the Federal Register.

The ROD and Final SEIS may also be viewed at the BLM Ruby website: http://www.blm.gov/nv/st/en/info/nepa/ruby_pipeline_project.html. Hard copies will also be available for public viewing at other locations, see the BLM Ruby Project website (address above) for a list of these locations.

Project Background
Ruby Pipeline Project is a 678-mile long, 42-inch diameter interstate natural gas pipeline that crosses 368 miles of Federal land beginning near Opal, Wyoming, through northern Utah and northern Nevada, and terminates near Malin, Oregon.

The Ruby Project was approved by the Federal Energy Regulatory Commission April 5, 2010; the Right-of-Way (ROW) Grant and Plan of Development (POD) were approved by a ROD issued by the BLM on July 12, 2010. The BLM Nevada State Director, as the designated Federal official, signed the ROD and authorized the ROW for the construction, operation, maintenance, and termination of the pipeline and associated facilities across lands under the jurisdiction of the BLM, the U.S. Forest Service, the Bureau of Reclamation, and the U.S. Fish and Wildlife Service (FWS) in the four states. The pipeline went into service on July 28, 2011.

The Center for Biological Diversity, Defenders of Wildlife, and Summit Lake Paiute Tribe, among other entities, filed petitions for review of the US Fish and Wildlife Service's (FWS) 2010 Biological Opinion (BiOp) and the BLM's ROD in the Ninth Circuit Court of Appeals case nos. 10-72356, 10-72552, 10-72762, 10-72768, and 10-72775 (consolidated). In October 2012, the court denied most of the petitioners' claims, including all claims brought under the National Historic Preservation Act, Federal Land Policy and Management Act, and Clean Water Act, but found the 2010 BiOp and BLM ROD to be inadequate.

In a published opinion, the court remanded and vacated the 2010 BiOp to the FWS. The court remanded and vacated the BLM's ROD because it relied on the 2010 BiOp. In an unpublished opinion, the court found that the Final EIS for the Project did not provide sufficient quantified or detailed data about the cumulative loss of sagebrush steppe vegetation and habitat and did not provide information on how much acreage sagebrush steppe used to occupy, or what percentage has been destroyed. Thus, the court remanded the ROD to the BLM for further analysis of cumulative impacts to sage brush steppe vegetation and habitat. The court subsequently stayed vacature of the 2010 BiOp until the FWS issued the Revised BiOp and stayed vacature of the BLM's ROD until the BLM issues a new ROD.

In the Final SEIS, the BLM addresses the court's direction to provide quantified and detailed about the cumulative loss of sagebrush steppe vegetation and habitat and information on how much acreage sagebrush steppe use to occupy, and what percentage has been destroyed. It also includes detailed information on past, present, and reasonably foreseeable actions within the cumulative impact area, as defined in the Final EIS for the Project, which have resulted in and may continue to cause significant impacts.

The ROD is based on the analyses contained in the Final EIS and the Final SEIS for the Project. It also relies on the FWS's revision to the 2010 BiOp. The Revised BiOp was published on July 5, 2013.

The BLM's decision is to reissue the July 12, 2010 right-of-way, as previously amended, for the Project. The BLM will not require additional post-construction mitigation or changes to the right-of-way grant. All elements of the July 12, 2010 ROD and subsequent BLM decisions (see above) remain in full force and effect, including all stipulations, monitoring, and mitigation measures.

As explained in the ROD, the ROD can be appealed to the Interior Board of Land Appeals (or to an appropriate United States Court of Appeals), so the BLM is releasing the Final SEIS and ROD on the same date. Review of the Final SEIS and the opportunity to seek review of the ROD run concurrently.

If you have any questions, please contact Mark A. Mackiewicz, PMP, Senior National Project Manager at (435) 636-3616, Bureau of Land Management Price Field Office, 125 South 600 West, Price, Utah 84501.

Sincerely,

Mark A. Mackiewicz, PMP
Senior National Project Manager